

1-1 By: Ashby, et al. (Senate Sponsor - Nichols) H.B. No. 5
 1-2 (In the Senate - Received from the House April 12, 2021;
 1-3 April 15, 2021, read first time and referred to Committee on
 1-4 Transportation; April 26, 2021, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
 1-6 April 26, 2021, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 5 By: Nichols

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the expansion of broadband services to certain areas.
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-23 SECTION 1. Section 490H.002(a), Government Code, is amended
 1-24 to read as follows:
 1-25 (a) The council is composed of one nonvoting member
 1-26 appointed by the state broadband development office and the
 1-27 following 17 voting members:
 1-28 (1) two representatives of separate Internet service
 1-29 provider industry associations, including at least one
 1-30 representative of an association that primarily represents
 1-31 regulated small providers, as defined by Section 56.032, Utilities
 1-32 Code, appointed by the governor;
 1-33 (2) one representative of the health information
 1-34 technology industry, appointed by the governor;
 1-35 (3) two representatives of unaffiliated nonprofit
 1-36 organizations that advocate for elderly persons statewide,
 1-37 appointed by the governor;
 1-38 (4) two representatives of unaffiliated nonprofit
 1-39 organizations that have a demonstrated history of working with the
 1-40 legislature and the public to identify solutions for expanding
 1-41 broadband to rural, unserved areas of this state, appointed by the
 1-42 governor;
 1-43 (5) one representative of an agricultural advocacy
 1-44 organization in this state, appointed by the governor;
 1-45 (6) one representative of a hospital advocacy
 1-46 organization in this state, appointed by the governor;
 1-47 (7) one representative of a medical advocacy
 1-48 organization in this state, appointed by the governor;
 1-49 (8) one county official who serves in an elected
 1-50 office of a county with a population of less than 35,000, appointed
 1-51 by the governor;
 1-52 (9) one municipal official who serves in an elected
 1-53 office of a municipality with a population of less than 20,000
 1-54 located in a county with a population of less than 60,000, appointed
 1-55 by the governor;
 1-56 (10) one representative of an institution of higher
 1-57 education that has its main campus in a county with a population of
 1-58 less than 60,000, appointed by the governor;
 1-59 (11) one representative of a school district with a
 1-60 territory that includes only counties with a population of less

2-1 than 60,000, appointed by the governor;
 2-2 (12) one representative from a library association,
 2-3 appointed by the governor;
 2-4 (13) one member of the house of representatives,
 2-5 appointed by the speaker of the house of representatives; and
 2-6 (14) one state senator, appointed by the lieutenant
 2-7 governor.

2-8 SECTION 2. Section 490H.006(a), Government Code, is amended
 2-9 to read as follows:

2-10 (a) The council shall:

2-11 (1) research and monitor the progress of:

2-12 (A) broadband development in unserved areas;

2-13 (B) deployment of broadband services statewide;

2-14 and

2-15 (C) purchase of broadband by residential and
 2-16 commercial customers;

2-17 (2) identify barriers to residential and commercial
 2-18 broadband deployment in unserved areas;

2-19 (3) study:

2-20 (A) technology-neutral solutions to overcome
 2-21 barriers identified under Subdivision (2); and

2-22 (B) industry and technology trends in broadband
 2-23 services; and

2-24 (4) analyze how statewide access to broadband would
 2-25 benefit:

2-26 (A) economic development;

2-27 (B) the delivery of educational opportunities in
 2-28 higher education and public education;

2-29 (C) state and local law enforcement;

2-30 (D) state emergency preparedness; and

2-31 (E) the delivery of health care services,
 2-32 including telemedicine and telehealth.

2-33 SECTION 3. Subtitle F, Title 4, Government Code, is amended
 2-34 by adding Chapter 490I to read as follows:

2-35 CHAPTER 490I. STATE BROADBAND DEVELOPMENT OFFICE

2-36 Sec. 490I.0101. OFFICE. (a) The state broadband
 2-37 development office is established to promote the expansion of
 2-38 access to broadband service in this state.

2-39 (b) The state broadband development office is
 2-40 administratively attached to The University of Texas System. The
 2-41 system may employ additional employees necessary for the discharge
 2-42 of the duties of the office.

2-43 (c) The state broadband development office:

2-44 (1) is under the direction and control of the board of
 2-45 advisors established by Section 490I.0104;

2-46 (2) shall promote the policies enumerated in this
 2-47 chapter; and

2-48 (3) may perform any action authorized by state or
 2-49 federal law.

2-50 Sec. 490I.0102. POWERS AND DUTIES. (a) The state broadband
 2-51 development office shall:

2-52 (1) serve as a resource for information regarding
 2-53 broadband service in this state;

2-54 (2) engage in outreach to communities regarding the
 2-55 expansion, adoption, and affordability of broadband service and the
 2-56 programs administered by the office; and

2-57 (3) serve as an information clearinghouse regarding
 2-58 federal programs that provide assistance to local entities with
 2-59 respect to broadband service.

2-60 (b) The office has the powers necessary to carry out the
 2-61 duties of the office under this chapter, including the power to
 2-62 enter into contracts and other necessary instruments.

2-63 (c) This chapter does not grant the office authority to
 2-64 regulate broadband services or broadband service providers or,
 2-65 except as provided by Section 490I.0107, to require broadband
 2-66 service providers to submit information to the office.

2-67 Sec. 490I.0103. THRESHOLD SPEED FOR BROADBAND SERVICE. (a)
 2-68 For the purposes of this chapter and subject to Subsection (b),
 2-69 "broadband service" means Internet service with the capability of

3-1 providing:
3-2 (1) a download speed of 25 megabits per second or
3-3 faster; and
3-4 (2) an upload speed of 3 megabits per second or faster.
3-5 (b) If the Federal Communications Commission adopts
3-6 download or upload threshold speeds for advanced
3-7 telecommunications capability under 47 U.S.C. Section 1302 that are
3-8 higher than those specified by Subsection (a), the state broadband
3-9 development office by rule may require Internet service to be
3-10 capable of providing download and upload speeds that match those
3-11 federal threshold speeds in order to qualify as broadband service
3-12 under this chapter.
3-13 (c) Not later than the 60th day after the date the state
3-14 broadband development office adjusts the minimum download or upload
3-15 speeds required for Internet service to qualify as broadband
3-16 service under this chapter, the office shall publish the adjusted
3-17 minimum download and upload speeds on the comptroller's Internet
3-18 website.
3-19 Sec. 490I.0104. BOARD OF ADVISORS. (a) In this section:
3-20 (1) "Rural area" means a county with a population of
3-21 less than 100,000 that is not adjacent to a county with a population
3-22 of more than 350,000.
3-23 (2) "Urban area" means:
3-24 (A) a municipality with a population of more than
3-25 500,000; or
3-26 (B) a county with a population of more than 1
3-27 million.
3-28 (b) The state broadband development office board of
3-29 advisors is composed of 12 members, appointed as follows:
3-30 (1) three members appointed by the governor,
3-31 including:
3-32 (A) one member to represent the Texas Economic
3-33 Development and Tourism Office; and
3-34 (B) two members to represent nonprofit
3-35 corporations that work on broadband connectivity, broadband
3-36 adoption, and digital literacy;
3-37 (2) three members appointed by the lieutenant
3-38 governor, including:
3-39 (A) one member who resides in a rural area;
3-40 (B) one member who resides in an urban area; and
3-41 (C) one member to represent the public education
3-42 community;
3-43 (3) three members appointed by the speaker of the
3-44 house of representatives, including:
3-45 (A) one member who resides in a rural area;
3-46 (B) one member who resides in a county that:
3-47 (i) is adjacent to an international border;
3-48 (ii) is located not more than 150 miles from
3-49 the Gulf of Mexico; and
3-50 (iii) has a population of more than 60,000;
3-51 and
3-52 (C) one member to represent the health and
3-53 telemedicine industry;
3-54 (4) one member appointed by the board of regents of The
3-55 University of Texas System;
3-56 (5) one member appointed by the board of regents of the
3-57 Texas Tech University System; and
3-58 (6) one nonvoting member appointed by the state
3-59 broadband development office to represent the office.
3-60 (c) Members of the board of advisors serve at the pleasure
3-61 of the appointing authority for staggered two-year terms, with the
3-62 terms of the members described by Subsections (b)(1) and (2)
3-63 expiring February 1 of each odd-numbered year and the terms of the
3-64 members described by Subsections (b)(3), (4), (5), and (6) expiring
3-65 February 1 of each even-numbered year. A member may serve more than
3-66 one term.
3-67 (d) Not later than the 30th day after the date a member's
3-68 term expires, the appropriate appointing authority shall appoint a
3-69 replacement in the same manner as the original appointment.

4-1 (e) If a vacancy occurs on the board of advisors, the
 4-2 appropriate appointing authority shall appoint a successor in the
 4-3 same manner as the original appointment to serve for the remainder
 4-4 of the unexpired term. The appropriate appointing authority shall
 4-5 appoint the successor not later than the 30th day after the date the
 4-6 vacancy occurs.

4-7 (f) The board of advisors shall meet at least once per month
 4-8 with representatives from the state broadband development office
 4-9 for the purpose of directing and overseeing the work of the office
 4-10 in implementing the provisions of this chapter.

4-11 (g) The board of advisors may retain employees to discharge
 4-12 the duties of the office.

4-13 (h) A person who is professionally affiliated with a person
 4-14 -serving as a member of the board of advisors is not eligible for
 4-15 funding from the broadband development program established under
 4-16 Section 490I.0107.

4-17 (i) The board of advisors may consult with stakeholders with
 4-18 technical expertise in the area of broadband and telecommunication
 4-19 technology.

4-20 (j) Meetings of the board of advisors are subject to Chapter
 4-21 551.

4-22 Sec. 490I.0105. PARTICIPATION IN PROCEEDINGS OF FEDERAL
 4-23 COMMUNICATIONS COMMISSION. (a) The state broadband development
 4-24 office may monitor, participate in, and provide input in
 4-25 proceedings of the Federal Communications Commission related to the
 4-26 geographic availability and deployment of broadband service in this
 4-27 state to ensure that:

4-28 (1) the information available to the commission
 4-29 reflects the current status of geographic availability and
 4-30 deployment of broadband service in this state; and

4-31 (2) this state is best positioned to benefit from
 4-32 broadband service deployment programs administered by federal
 4-33 agencies.

4-34 (b) The office may participate in a process established by
 4-35 the Federal Communications Commission allowing governmental
 4-36 entities to challenge the accuracy of the commission's information
 4-37 regarding the geographic availability and deployment of broadband
 4-38 service.

4-39 (c) The office shall establish procedures and a data
 4-40 collection process in accordance with rules established by the
 4-41 Federal Communications Commission that will enable the office to
 4-42 participate in the process described by Subsection (b).

4-43 Sec. 490I.0106. BROADBAND DEVELOPMENT MAP. (a) The state
 4-44 broadband development office shall develop and maintain a public
 4-45 Internet website.

4-46 (b) The office shall create, update annually, and publish on
 4-47 the office's Internet website a map classifying each designated
 4-48 area in this state as:

4-49 (1) an eligible area, if fewer than 80 percent of the
 4-50 addresses in the designated area have access to broadband service;
 4-51 or

4-52 (2) an ineligible area, if 80 percent or more of the
 4-53 addresses in the designated area have access to broadband service.

4-54 (c) The office by rule may determine the scope of a
 4-55 designated area under Subsection (b).

4-56 (d) After creation of the initial map described in
 4-57 Subsection (b), the office may evaluate the usefulness of the
 4-58 standards for eligible and ineligible areas outlined in Subsection
 4-59 (b) and, if appropriate, make a recommendation to the legislature
 4-60 to revise the standards.

4-61 (e) The map must display:

4-62 (1) the number of broadband service providers that
 4-63 serve each eligible area;

4-64 (2) for each eligible area, an indication of whether
 4-65 the area has access to Internet service that is not broadband
 4-66 service, regardless of the technology used to provide the service;
 4-67 and

4-68 (3) each public school campus in this state with an
 4-69 indication of whether the public school campus has access to

5-1 broadband service.

5-2 (f) The office must create, update, and publish the map in a
 5-3 manner consistent with the Federal Communications Commission
 5-4 mapping methodology prescribed under the Broadband DATA Act (Pub.
 5-5 L. No. 116-130).

5-6 (g) Except as provided by Subsection (h), the office shall
 5-7 use information available from the Federal Communications
 5-8 Commission to create or update the map.

5-9 (h) If information from the Federal Communications
 5-10 Commission is not sufficient for the office to create or update the
 5-11 map, the office may request the necessary information from a
 5-12 political subdivision or broadband service provider, and the
 5-13 subdivision or provider may report the information to the office.
 5-14 The office may not require a subdivision or provider to report
 5-15 information in a format different from the format required by the
 5-16 Federal Communications Commission mapping methodology prescribed
 5-17 under the Broadband DATA Act (Pub. L. No. 116-130).

5-18 (i) Information a broadband service provider reports to the
 5-19 office under Subsection (h) and information provided by the Federal
 5-20 Communications Commission, if not publicly available, is
 5-21 confidential and not subject to disclosure under Chapter 552.

5-22 (j) The office may contract with a private consultant or
 5-23 other appropriate person who is not associated or affiliated with a
 5-24 commercial broadband provider, including a local governmental
 5-25 entity, to provide technical or administrative assistance to the
 5-26 office for the purpose of creating or updating the map.

5-27 (k) The office may release information reported under
 5-28 Subsection (h) to a contractor providing services under Subsection
 5-29 (j). The contractor shall:

5-30 (1) keep the information confidential; and

5-31 (2) return the information to the office on the
 5-32 earliest of the following dates:

5-33 (A) the date the contract expires;

5-34 (B) the date the contract is terminated; or

5-35 (C) the date the mapping project for which the
 5-36 contractor is providing services is complete.

5-37 (l) A person who contracts under Subsection (j) may not
 5-38 provide services for a broadband provider in this state before the
 5-39 second anniversary of the last day the contract is in effect.

5-40 (m) The office shall establish criteria for determining
 5-41 whether a designated area should be reclassified as an eligible
 5-42 area or an ineligible area. The criteria must include an evaluation
 5-43 of Internet speed test data and information on end user addresses.
 5-44 The criteria may also include community surveys regarding the
 5-45 reliability of Internet service, where available.

5-46 (n) A broadband service provider or political subdivision
 5-47 may petition the office to reclassify a designated area on the map
 5-48 as an eligible area or ineligible area. The office shall provide
 5-49 notice of the petition to each broadband service provider that
 5-50 provides broadband service to the designated area and post notice
 5-51 of the petition on the office's Internet website.

5-52 (o) Not later than the 45th day after the date that a
 5-53 broadband provider receives notice under Subsection (n), the
 5-54 provider shall provide information to the office showing whether
 5-55 the designated area should or should not be reclassified.

5-56 (p) Not later than the 75th day after the date that a
 5-57 broadband provider receives notice under Subsection (n), the office
 5-58 shall determine whether to reclassify the designated area on the
 5-59 map and update the map as necessary. A determination made by the
 5-60 office under this subsection is not a contested case for purposes of
 5-61 Chapter 2001.

5-62 (q) The office is not required to create, update, or publish
 5-63 a map under this section if the Federal Communications Commission
 5-64 produces a map that:

5-65 (1) enables the office to identify eligible and
 5-66 ineligible areas, as described by Subsection (b); and

5-67 (2) meets the requirements of Subsection (f).

5-68 Sec. 490I.0107. BROADBAND DEVELOPMENT PROGRAM. (a) The
 5-69 state broadband development office shall establish a program to

6-1 award grants, low-interest loans, and other financial incentives to
 6-2 applicants for the purpose of expanding access to and adoption of
 6-3 broadband service in designated areas determined to be eligible
 6-4 areas by the office under Section 490I.0106.

6-5 (b) The office shall establish and publish eligibility
 6-6 criteria for award recipients. The criteria must:

6-7 (1) include consideration of grants and other
 6-8 financial incentives awarded from the federal government for the
 6-9 deployment of broadband service in a designated area;

6-10 (2) require that grants, loans, and other financial
 6-11 incentives awarded through the program be used only for capital
 6-12 expenses, purchase or lease of property, and other expenses,
 6-13 including backhaul and transport, that will facilitate the
 6-14 provision or adoption of broadband service; and

6-15 (3) prioritize eligible areas in which the lowest
 6-16 percentage of addresses have access to broadband service.

6-17 (c) Notwithstanding Subsection (b)(3), the office may
 6-18 establish eligibility criteria that take into account a cost
 6-19 benefit analysis for awarding money to the eligible areas described
 6-20 by that subdivision.

6-21 (d) The office may not:

6-22 (1) favor a particular broadband technology in
 6-23 awarding grants, loans, or other financial incentives;

6-24 (2) award grants, loans, or other financial incentives
 6-25 to a broadband provider that does not report information requested
 6-26 by the office under Section 490I.0106;

6-27 (3) award a grant, loan, or other financial incentive
 6-28 to a noncommercial provider of broadband service for an eligible
 6-29 area if a commercial provider of broadband service has submitted an
 6-30 application for the eligible area; or

6-31 (4) take into consideration distributions from the
 6-32 state universal service fund established under Section 56.021,
 6-33 Utilities Code, when deciding to award grants, loans, or other
 6-34 financial incentives.

6-35 (e) An award granted under this section does not affect
 6-36 distributions received by a broadband provider from the state
 6-37 universal service fund established under Section 56.021, Utilities
 6-38 Code.

6-39 Sec. 490I.0108. BROADBAND DEVELOPMENT FUND. (a) The
 6-40 broadband development fund is a special fund in the state treasury
 6-41 outside of the general revenue fund.

6-42 (b) The fund consists of:

6-43 (1) appropriations of money to the fund by the
 6-44 legislature;

6-45 (2) gifts, donations, and grants, including federal
 6-46 grants; and

6-47 (3) interest earned on the investment of the money in
 6-48 the fund.

6-49 (c) The comptroller shall deposit to the credit of the fund
 6-50 federal money received by the state for the purpose of broadband
 6-51 development, to the extent permitted by state and federal law.

6-52 (d) Money in the fund may be appropriated only to the state
 6-53 broadband development office for purposes of:

6-54 (1) administering the broadband development program;

6-55 (2) creating or updating the map described by Section
 6-56 490I.0106;

6-57 (3) creating or updating the state broadband plan
 6-58 under Section 490I.0109; or

6-59 (4) engaging in outreach to communities regarding the
 6-60 programs administered by the office and the expansion, adoption,
 6-61 and affordability of broadband services and equipment.

6-62 (e) The fund is exempt from the application of Section
 6-63 404.071.

6-64 Sec. 490I.0109. STATE BROADBAND PLAN. (a) The state
 6-65 broadband development office shall prepare a state broadband plan
 6-66 that establishes long-term goals for greater access to and
 6-67 affordability and adoption of broadband service in this state.

6-68 (b) In developing the state broadband plan, the office
 6-69 shall:

7-1 (1) collaborate, to the extent possible, with state
7-2 agencies, political subdivisions, broadband industry stakeholders
7-3 and representatives, and community organizations that focus on
7-4 broadband services and technology access;

7-5 (2) give consideration to the policy recommendations
7-6 of the governor's broadband development council;

7-7 (3) favor policies that are technology-neutral and
7-8 protect all members of the public;

7-9 (4) explore state and regional approaches to broadband
7-10 development; and

7-11 (5) prioritize broadband needs related to public
7-12 education and state and local education agencies, including
7-13 agencies involved in the electronic administration of all
7-14 assessment instruments required under Section 39.023, Education
7-15 Code.

7-16 Sec. 490I.0110. RULEMAKING. The state broadband
7-17 development office may adopt rules necessary to implement this
7-18 chapter. Rules must be:

7-19 (1) proposed and adopted according to Chapter 2001;
7-20 and

7-21 (2) approved by a majority vote of the board of
7-22 advisors.

7-23 SECTION 4. Not later than November 1, 2021, each appointing
7-24 authority shall appoint the members of the state broadband
7-25 development office board of advisors as required by Section
7-26 490I.0104, Government Code, as added by this Act. The board of
7-27 advisors may not take action until a majority of the members have
7-28 taken office.

7-29 SECTION 5. Not later than the first anniversary of the
7-30 effective date of this Act, the state broadband development office
7-31 established by Section 490I.0101, Government Code, as added by this
7-32 Act, shall prepare the initial state broadband plan required by
7-33 Section 490I.0109, Government Code, as added by this Act.

7-34 SECTION 6. (a) The state broadband development office
7-35 established by Section 490I.0101, Government Code, as added by this
7-36 Act, shall publish the map required by Section 490I.0106,
7-37 Government Code, as added by this Act, on the office's Internet
7-38 website not later than January 1, 2023.

7-39 (b) Not later than September 1, 2022, the office shall
7-40 publish on the office's Internet website:

7-41 (1) a map created by the Federal Communications
7-42 Commission that displays the number of broadband service providers
7-43 that serve each designated area; or

7-44 (2) a link to a map described by Subdivision (1) of
7-45 this subsection.

7-46 (c) For the purpose of administering the broadband
7-47 development program established by Section 490I.0107, Government
7-48 Code, as added by this Act, the office shall use a map described by
7-49 Subsection (b) of this section to determine whether an area is
7-50 eligible until the office publishes the map required by Section
7-51 490I.0106, Government Code, as added by this Act.

7-52 SECTION 7. This Act takes effect immediately if it receives
7-53 a vote of two-thirds of all the members elected to each house, as
7-54 provided by Section 39, Article III, Texas Constitution. If this
7-55 Act does not receive the vote necessary for immediate effect, this
7-56 Act takes effect September 1, 2021.

7-57 * * * * *